

REMARKS

In the specification, paragraph [0001] has been amended to provide the current application information regarding the present application.

Claims 1 through 12 are currently pending in the application.

Claims 1 through 12 are rejected.

Applicants have amended claims 1, 2, 4, 7, 8, 9, and 12, and respectfully request reconsideration of the application as amended herein.

Information Disclosure Statement(s)

Applicants note the filing of an Information Disclosure Statement herein on March 16, 2004, and note that no copy of the PTO-1449 was returned with the outstanding Office Action. Applicant respectfully requests that the information cited on the PTO-1449 (which is the same as that of record to that date in the parent application hereto) be made of record herein.

Preliminary Amendment

Applicants' undersigned attorney notes the filing herein of a Preliminary Amendment on June 10, 2004, which filing was not acknowledged in the outstanding Office Action. Should the Preliminary Amendment have failed for some reason to have been entered in the Office file, Applicants' undersigned attorney will be happy to have a true copy thereof hand-delivered to the Examiner.

35 U.S.C. § 101 Double Patenting Rejection

Claims 1 through 3 and 5 through 12 stand rejected under 35 U.S.C. § 101 as claiming the same invention as that of claims 1 through 10 of prior U.S. Patent 6,801,048 (hereinafter referred to as the '048 patent). Applicants respectfully traverse this rejection, as hereinafter set forth.

Applicants assert that a reliable test for statutory double patenting under 35 U.S.C. § 101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent. Is there an embodiment of the invention that falls within the scope of one claim, but not the other? If there is such an embodiment, then identical subject

matter is not defined by both claims and statutory double patenting under 35 U.S.C. § 101 does not exist. *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

Applicants assert that no statutory double patenting under 35 U.S.C. § 101 exists between the embodiments of the inventions set forth in presently amended independent claims 1, 7, 8, and 9 of the present application and corresponding claims 1, 5, 6, and 7 of the '048 patent because different embodiments of the invention are being claimed. For instance, the embodiment of the invention set forth in presently amended independent claim 1 of the present application has an element of the invention calling for "a switching circuit . . . the switching circuit including a switchable transistor" whereas corresponding independent claim 1 of the '048 patent does not. Further, for instance, the embodiments of the inventions set forth in presently amended independent claims 7 and 8 of the present application has an element of the invention calling for "a switching circuit . . . comprising a programmable circuit including at least one switching circuit selected from a group comprising a fuse, a switchable transistor, and a flash memory cell" whereas the embodiments of the inventions set forth in corresponding independent claims 6 and 7 of the '048 patent do not. Continuing, the embodiment of the invention set forth in presently amended independent claim 9 of the present application has an element of the invention calling for "conducting the second mode initiate signal to the function circuit" whereas corresponding independent claim 7 of the '048 patent includes additional claim limitations. Therefore, no statutory double patenting exists between the embodiments of the inventions of presently amended independent claims 1, 7, 8, and 9 of the present application and corresponding claims 1, 5, 6, and 7 of the '048 patent. Accordingly, presently amended independent claims 1, 7, 8, and 9 are allowable as well as the dependent claims therefrom.

Objections to Claims 2, 4, and 12

Examiner has objected to Claims 2, 4, and 12. The claims have been amended as suggested by Examiner.

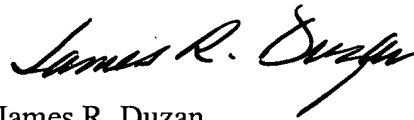
ENTRY OF AMENDMENTS

The amendments to claims 1, 2, 4, 7, 8, 9, and 12 above should be entered by the Examiner because the amendments are supported by the as-filed specification and drawings and do not add any new matter to the application.

CONCLUSION

Claims 1, 2, 4, 7, 8, 9, and 12 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, he is respectfully invited to contact Applicants' undersigned attorney.

Respectfully submitted,



James R. Duzan
Registration No. 28,393
Attorney for Applicant(s)
TRASKBRITT
P.O. Box 2550
Salt Lake City, Utah 84110-2550
Telephone: 801-532-1922

Date: May 27, 2005
JRD/nj:lmh
Document in ProLaw